



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

**[WC Docket Nos. 19-2 and 13-184; FCC 19-5]**

**E-Rate Program Amortization Requirement, Modernizing the E-Rate Program for Schools and Libraries**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) proposes to eliminate the E-Rate amortization requirement, which requires E-Rate applicants to amortize over three years upfront, non-recurring category one charges of \$500,000 or more. Through this measure, the Commission seeks to further the Commission's goal of closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation's schools and libraries.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by WC Docket Nos. 19-2 and 13-184, by any of the following methods:

- Federal Communications Commission's website: <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 888-835-5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Bryan P. Boyle, Wireline Competition Bureau, (202) 418-7924 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 19-2 and 13-184; FCC 19-5, adopted on January 29, 2019 and released on January 31, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12<sup>th</sup> Street S.W., Washington, DC 20554 or at the following Internet address: <https://docs.fcc.gov/public/attachments/FCC-19-5A1.pdf>.

## **I. INTRODUCTION**

1. Schools and libraries rely on the Commission's E-Rate program to ensure that they can receive affordable, high-speed broadband so they can connect today's students with next-generation learning opportunities. A Commission decision in 2000 limited E-Rate's use for this purpose by requiring schools and libraries to amortize over three years upfront, non-recurring category one charges of \$500,000 or more, which includes charges for special construction projects. This amortization requirement increased costs for E-Rate supported builds and created uncertainty for applicants about the availability of E-Rate funding for the second and third years of the amortization cycle. In 2014, the Commission suspended the requirement through funding year 2018 in order to lower these barriers to broadband infrastructure investment. Our experience over the past few years suggests that allowing the amortization requirement to be restored would decrease broadband investment while increasing

administrative burdens, and that eliminating the requirement would not create a drain on E-Rate funding. Therefore, the Commission now proposes to eliminate the amortization requirement. Through these measures, the Commission seeks to further its goals of closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation's schools and libraries.

## **II. NOTICE OF PROPOSED RULEMAKING**

2. To promote the buildout and deployment of high-speed networks and connections on a permanent basis to unserved and underserved schools and libraries, including those in rural areas, the Commission proposes to eliminate the amortization requirement for non-recurring category one funding requests over \$500,000, including for special construction, from the E-Rate program. As discussed below, our experience indicates that the suspension of the amortization requirement has encouraged the deployment of high-speed, low-cost broadband networks by eliminating administrative barriers and making E-Rate funding more predictable.

3. Based on the information before us, it appears that suspending the amortization requirement has: (1) decreased administrative burdens associated with applying for E-Rate support; (2) allowed applicants and service providers to receive disbursements for the full E-Rate supported portion of projects sooner; and (3) reduced uncertainty regarding the availability of funding. Under the suspension, rather than filing funding requests in each year of the amortization cycle, applicants have had to file only a single funding request to receive E-Rate support for a project, thereby reducing the administrative effort and costs associated with filing funding requests. Moreover, during the suspension, service providers have recouped their buildout costs in one funding year rather than over the three-year amortization cycle, which, in turn, has likely made special construction a more attractive option for service providers. Additionally, applicants have enjoyed more certainty about funding for their special construction projects, receiving commitments for projects upfront, rather than in a piecemeal fashion over three years. As a result, the suspension of the amortization requirement has

provided applicants and service providers with increased certainty and predictability that E-Rate funding will be available for large, special construction funding requests, which has likely incentivized efficient investment in infrastructure, including the deployment of fiber.

4. The Commission invites comment on, and evidence regarding, whether the amortization suspension has encouraged the deployment of high-speed, low-cost connections. The Commission also seeks comment on the effect of the amortization suspension on applicants and on USF expenditures. Has permitting service providers to recoup costs up front allowed applicants and the USF to pay less over time because service providers have not otherwise recouped capital costs over time through higher recurring charges? Would permanently eliminating the amortization requirement allow applicants and the USF to pay less over time for the same reason?

5. If the amortization requirement were to be restored, the Commission expects that the increased administrative burden, delayed funding commitments for special construction projects due to the three-year amortization cycle, and uncertainty around receiving funding commitments in the second and third years of the cycle would deter applicants from seeking funding for special construction. The Commission seeks comment on this view. The Commission also seeks comment on the effect of restoring the amortization requirement on applicants and on USF expenditures. Would applicants, particularly those in underserved and rural areas, be discouraged from requesting funding for special construction if the amortization requirement were to be restored? Would these applicants simply not request funding for any services at all? Would they be forced to seek funding for more costly service options, such as funding for services provided over more expensive legacy networks, thereby resulting in an increase in USF expenditures? Or would they still seek special construction funding for new networks, but with all buildout costs rolled into monthly recurring charges? What effect would this have on USF expenditures in the long term? Specifically, would rolling buildout charges into higher monthly recurring charges ultimately cause applicants and the USF to pay more over time? Does paying buildout

charges upfront increase USF expenditures in the short term but decrease USF expenditures in the long term because it reduces monthly recurring charges? The Commission also seeks comment on whether an amortization requirement would conflict with the economic realities of special construction projects. Would requiring service providers to wait several years to recover their investments for high sunk cost, low marginal cost undertakings such as special construction make them less likely to build out to unserved areas? If applicants were forced to amortize certain special construction projects, would service providers have to seek financing for part of the project, and would that increase the overall cost of the project?

6. Further, over the four funding years of the suspension, it appears the concern that one-time charges would create a drain on the Fund has not materialized. To the contrary, funding requests from funding years 2015 through 2017 that would have been amortized if the requirement had been in place represented less than 5% of all E-Rate funding commitments during that period. Going forward, the Commission does not expect that allowing all funding associated with a special construction project to be paid out in one funding year, rather than over the course of three funding years, would divert funding from other services, as demand for E-Rate funding was typically under the cap from funding years 2015 through 2018, and there is no indication that there will be a significant increase in demand for future funding years.

7. Are commenters nevertheless concerned that large special construction funding requests could deplete all E-Rate funds available under the cap and leave insufficient funding available for category two services? If so, the Commission seeks data to support commenters' concerns. And to the extent that commenters believe that large special construction funding requests could create a drain on E-Rate funding, how would requiring amortization of such requests alleviate this concern? In particular, even if demand were to approach the E-Rate funding cap, the Commission does not believe that requiring amortization for large, upfront category one funding requests would necessarily alleviate

this problem because requiring amortization would not reduce the amount of funding requested—it would simply spread out the amount of funding provided over a minimum of three years. While this approach could mitigate the impact of a one-year surge in demand for special construction, it would not mitigate problems that a consistent increase in demand would create. Are there better ways to mitigate any drain on E-Rate funding caused by large, upfront requests for category one funding other than requiring amortization?

8. To the extent that commenters disagree with our proposal to permanently eliminate the amortization requirement, they should explain why and provide supporting data. What are the benefits, if any, of reinstating the amortization requirement for funding year 2020 and beyond, and how do those benefits outweigh the costs of the amortization requirement? Are there problems that resulted from the amortization suspension that the Commission has not identified?

### III. PROCEDURAL MATTERS

9. *Paperwork Reduction Act.* The NPRM may result in revised information collection requirements. If the Commission adopts any revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

10. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for

comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

11. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.

12. The rule the Commission proposes in this NPRM is directed at streamlining the administration of the E-Rate program for applicants, service providers, and the Universal Service Administrative Company. The rule that the Commission proposes would eliminate burdens associated with requesting funding for special construction.

13. The legal basis for the NPRM is contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of

operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

15. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

16. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

17. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have

populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

18. The proposal under consideration in the NPRM may, if adopted, result in recordkeeping requirements for both large and small entities, but they should be equal to or less than existing requirements.

19. *Eliminating Amortization Requirement.* The Commission proposes to permanently eliminate the amortization requirement from the E-Rate program to provide applicants and service providers with increased certainty that E-Rate funding will be available for large, special construction funding requests, thereby likely incentivizing efficient investment in infrastructure, including deployment of fiber. The Commission seeks comment on whether eliminating the amortization requirement would increase administrative burdens for small entities.

20. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

21. In this NPRM, the Commission seeks comment on a reform to the E-Rate program. The Commission seeks to streamline the program rules and administration for applicants and service providers planning their E-Rate participation in future funding years. The Commission recognizes that its proposed rule would impact small entities. The rule the Commission proposes would lessen reporting burdens on small entities.

22. *Eliminating amortization requirement.* By eliminating the amortization requirement, applicants may file a single application for a special construction project, rather than multiple applications over multiple years for the same special construction project.

23. *Compliance burdens.* Implementing our proposed rule would impose some burden on small entities by requiring them to become familiar with the new rule to comply with it.

24. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

25. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the DATES section of this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### **IV. ORDERING CLAUSES**

26. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1 through 4, 201-205, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and § 1.3 of the Commission's rules, 47 CFR 1.3, this Notice of Proposed Rulemaking IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

*Secretary.*

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